

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:) Chapter 11
)
EASTERN LIVESTOCK CO., LLC,) Case No. 10-93904-BHL-11
)
Debtor.) Hon. Basil H. Lorch III

**TRUSTEE'S MOTION TO APPROVE COMPROMISE AND SETTLEMENT
WITH GENE SHIPMAN**

Pursuant to Federal Rule of Bankruptcy Procedure 9019, James A. Knauer, as chapter 11 trustee ("Trustee") for the bankruptcy estate (the "Estate") of Eastern Livestock Co., LLC ("Debtor"), by counsel, respectfully moves the Court to approve a compromise and settlement of claims between the Trustee and Gene Shipman ("Shipman"). In support of this Settlement Motion, the Trustee states as follows:

Introduction and Background

1. Certain petitioning creditors commenced the above-captioned chapter 11 case ("Chapter 11 Case") on December 6, 2010 (the "Petition Date"). The Court entered the *Order For Relief in An Involuntary Case and Order to Complete Filing* [Docket No. 110] on December 28, 2010.

2. On December 27, 2010, the Court entered the *Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee* [Docket No. 102] approving the *United States Trustee's Application for an Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee* [Docket No. 98] pursuant to 11 U.S.C. § 1104.

3. The Trustee filed the *Trustee's Chapter 11 Plan of Liquidation* on July 23, 2012 [Docket No. 1255] and the *First Amended Chapter 11 Plan of Liquidation* on October 26,

2012 [Docket No. 1490] (“Plan”). The Court entered an Order on December 17, 2012 [Docket No. 1644] (“Confirmation Order”) confirming the Plan.

4. The Trustee contends that prior to the Chapter 11 Case, Debtor purchased 71 head of cattle (the “Shipman Cattle”) from or through Shipman pursuant to contract. The Shipman Cattle were delivered to Cactus Growers, Inc. (“Cactus”) on or around November 1, 2010. According to Shipman, Cactus rejected 25 head (“Rejected Cattle”) of the Shipman Cattle.

5. Cactus interpled \$31,906.68, representing the proceeds of the Shipman Cattle minus the Rejected Cattle (“Interpled Funds”), with the Court in connection with Adversary Proceeding No. 11-59093 (the “Adversary”).

6. Shipman filed an Amended Answer of Defendant Gene Shipman to Intervenor Cactus Growers, Inc.’s First Amended Complaint in Intervention in the Nature of Interpleader, Counter-Claim Against Cactus Growers, Inc. and Cross-Claims Against Eastern Livestock, Inc. and Fifth Third Bank (the “Shipman Answer”) as Docket No. 155 in the Adversary, asserting claims to the Interpled Funds.

7. The Trustee contends that the Interpled Funds are property of Debtor’s bankruptcy estate.

8. On March 11, 2011, Shipman filed a proof of claim (the “Shipman POC”) in the Chapter 11 Case. The Shipman POC is designated on the official claims register maintained by The BMC Group, Inc. as claim no. 98. The Shipman POC asserts a total claim against Debtor in the amount of \$47,848.50.

The Settlement

9. The Trustee has negotiated a settlement of Shipman's claims on the terms set forth in the Settlement Agreement and Mutual Release attached hereto as Exhibit A ("Settlement Agreement"). Pursuant to the Settlement Agreement, the Trustee and Shipman have agreed to divide the Interpled Funds, with Shipman receiving \$3,200.00 of the Interpled Funds (the "Settlement Payment") and the Trustee receiving the remaining \$28,706.68 of the Interpled Funds. As of Shipman's receipt of the Settlement Payment, the Shipman POC shall be deemed to have been amended, without further action by either the Trustee or Shipman, to assert an unsecured claim in the total amount of \$44,648.50 (the "Shipman Allowed Claim"). The parties shall release and waive all other claims related to the Shipman Cattle.

10. In accordance with the terms of the Plan, the \$28,706.68 of Interpled Funds received by the Trustee shall become part of the Collateral Fund (as that term is defined in the Plan).

Basis for Relief

11. Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), this Court has authority to approve a compromise or settlement on motion made by the Trustee after notice and opportunity for a hearing.

12. Under Bankruptcy Rule 9019, a bankruptcy court should approve a proposed compromise if it is fair and equitable and in the best interests of the estate. See In re Doctors Hosp. of Hyde Park, Inc., 474 F.3d 421, 426 (7th Cir. 2007); Depoister v. Mary M. Holloway Found., 36 F.3d 582, 586 (7th Cir. 1994); Matter of Energy Co-op, Inc. 886 F.2d 921, 927 (7th Cir. 1989).

13. The Trustee believes that the compromise and settlement reflected in the proposed Settlement Agreement is fair and equitable and in the best interests of the estate. The Settlement Payment is less than the Trustee would be required to spend to obtain a judgment as to the relative rights in and to the Interpled Funds. Accordingly, continued litigation with Shipman would result in significant expenses and delay and a smaller recovery to the estate.

14. If no objections to this Settlement Motion are filed, the Trustee requests that the Court enter an order approving the Settlement Agreement. If any objections to this Settlement Motion are filed, the Trustee requests that this Settlement Motion and any timely filed objection be scheduled for hearing by the Court on the earliest date that is available and convenient to the Court.

WHEREFORE, the Trustee respectfully requests that the Court enter an order approving the Settlement Agreement attached hereto as Exhibit B and grant the Trustee all other just and proper relief.

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

By: /s/ Harmony Mappes

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CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2014, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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